IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

S.B. CIVIL WRIT PETITION NO.2714/2003 -STATE OF RAJASTHAN VS. SMT. CHANDANA DEVI & ANR.

WRIT PETITOIN UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 20th November, 2006

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Rameshwar Dave, Dy. Government Advocate for the petitioner.
Mr.R.K. Singhal, Advocate for the respondents.

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BY THE COURT: -

The petitioner State of Rajasthan has come up in the writ petition against the order dated 30.9.2002 passed by the Prescribed Authority under the Payment of Wages Act, 1948 (in short the Act of 1948) in an application under Section 20 of the Act of 1948.

The respondent though filed an application under Section 20(2)of the Act of 1948 with the prayer that the management be directed to pay her emoluments at the rate minimum wages in accordance with the provisions of the Act of 1948 for the period from 1.10.2001 to 30.3.2002. According to her she used to discharge her duties as cook in the hostel run by the Social Welfare Department at Government Schedule Caste Hostal, Bagra District Jalore from 7.00 to 11.00 AM and from 3.00 to 7.00 PM for the purpose of cooking the food. While she was so doing, she was paid only a sum of Rs.600/- per month. According to the provisions of the Act of 1948, the rate for daily wages for skilled workmen was Rs.68/- per day and accordingly, she was entitled to a sum of Rs.1768/- per month. The learned Prescribed Authority awarded a sum of Rs.7008/- as a difference of wages as per the rate of minimum wages

applicable for the relevant period and further awarded a sum of Rs.35040/- as five times penalty, thus awarding a total of Rs.42049/-.

Learned Dy. Government Advocate relied upon a Division Bench judgment of this Court in State of Rajasthan Vs. Shri Lachacha Ram & Anr. (D.B. Civil Special Appeal No.343/2005) decided on 29.8.2005 which was also a case of an employee of the Social Welfare Department who was awarded difference of the wages between what was paid and what was due to be paid as per prevalent rate of minimum wages. Apart from awarding such dues the Prescribed Authority also awarded five times penalty. It was argued that since there was a bonafide dispute whether or not the provisions of the Act would apply to the hostel run by the Social Welfare Department and further whether a hostel would be industry or not, while not accepting such argument, the Division Bench in those facts held as under:-

> "Be that as it may, in our opinion, it was not a case where a penalty was required to be imposed.

> There has been a serious dispute if the subject hostel is an industry or not. Without adjudicating on the issue that the subject hostel is an industry or not, we consider it appropriate to modify the order dated 30.9.2002 passed by the Authority under the Minimum Wages Act, Jalore by deleting the part of the order, whereby, a penalty of Rs.28,800/- has been inflicted."

On the other hand Shri R.K Singhal, learned counsel for the respondent argued that such an argument was not accepted by this Court in writ petition no.17/2002-State of Rajasthan Vs. Smt. Kamla & Anr. When a coordinate bench while passing interim order of 24.5.2006 directed the amount awarded by the Prescribed Authority to be deposited with the court. He argued that whether or not the hostel run by the Social Welfare Department is an industry would not be relevant for deciding an application under Section 20 of the Act of 1948 and therefore the impugned impugned does not suffer from any error apparent on the face of record.

Having considered the arguments of learned counsel for the parties, I am not persuaded to take contrary view from the

on taken by the Division Bench in the case of Smt. Lachcha Ram & Anr. (supra), which was also a case relating to the hostel run by the Social Welfare Department wherein also the workman was being paid wages as part time basis @ Rs.600/- per month just as in the present case. I see no good reason to take a different view than one taken by the Division Bench, which is even otherwise binding on me.

In the result, the writ petition is partly allowed. The order of the Prescribed Authority is modified and the direction with regard of imposition of five times penalty in the sum of Rs.35048/- is set aside.

There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-